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9 **BEFORE THE**
10 **BOARD OF REGISTERED NURSING**
11 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

12 In the Matter of the Accusation Against:

Case No.

2009-296

13 NILDA JAVIER ABAD

2107 Alpine Glen Place

14 Alpine, CA 91901

A C C U S A T I O N

15 Registered Nurse License No. 230065

16 Respondent.

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18 Complainant alleges:

19 **PARTIES**

20 1. Ruth Ann Terry, M.P.H., R.N. (Complainant) brings this Accusation
21 solely in her official capacity as the Executive Officer of the Board of Registered Nursing,
22 Department of Consumer Affairs.

23 2. On or about January 1, 1973, the Board of Registered Nursing issued
24 Registered Nurse License Number 230065 to Nilda Javier Abad (Respondent). The Registered
25 Nurse License was in full force and effect at all times relevant to the charges brought herein and
26 will expire on July 31, 2010, unless renewed.

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4. Section 2750 of the Business and Professions Code (Code) provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

STATUTORY PROVISIONS

The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

(1) Incompetence, or gross negligence in carrying out usual certified or licensed nursing functions.

(f) Conviction of a felony or of any offense substantially related to the qualifications, functions, and duties of a registered nurse, in which event the record of the conviction shall be conclusive evidence thereof.

A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge substantially related to the qualifications, functions and duties of a registered nurse is deemed to be a conviction within the meaning of this article. The board may order the license or certificate suspended or revoked, or may decline to issue a license or certificate, when the time for appeal

1 has elapsed, or the judgment of conviction has been affirmed on appeal or when
2 an order granting probation is made suspending the imposition of sentence,
3 irrespective of a subsequent order under the provision of Section 1203.4 of the
4 Penal Code allowing such person to withdraw his or her plea of guilty and to
5 enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the
6 accusation, information, or indictment.

7 8. Section 490 of the Code provides, in pertinent part, that a board may
8 suspend or revoke a license on the ground that the licensee has been convicted of a crime
9 substantially related to the qualifications, functions, or duties of the business or profession for
10 which the license was issued.

11 REGULATORY PROVISIONS

12 9. California Code of Regulations, title 16, section 1442 states:

13 As used in Section 2761 of the code, "gross negligence" includes an
14 extreme departure from the standard of care which, under similar circumstances,
15 would have ordinarily been exercised by a competent registered nurse. Such an
16 extreme departure means the repeated failure to provide nursing care as required
17 or failure to provide care or to exercise ordinary precaution in a single situation
18 which the nurse knew, or should have known, could have jeopardized the client's
19 health or life.

20 10. California Code of Regulations, title 16, section 1443 states:

21 As used in Section 2761 of the code, "incompetence" means the lack of
22 possession of or the failure to exercise that degree of learning, skill, care and
23 experience ordinarily possessed and exercised by a competent registered nurse as
24 described in Section 1443.5.

25 11. California Code of Regulations, title 16, section 1444 states:

26 A conviction or act shall be considered to be substantially related to the
27 qualifications, functions or duties of a registered nurse if to a substantial degree it
28 evidences the present or potential unfitness of a registered nurse to practice in a
manner consistent with the public health, safety, or welfare. Such convictions or
acts shall include but not be limited to the following:

...

(c) Theft, dishonesty, fraud, or deceit.

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1 12. California Code of Regulations, title 16, section 1445 states:

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3 (b) When considering the suspension or revocation of a license on the
4 grounds that a registered nurse has been convicted of a crime, the board, in
evaluating the rehabilitation of such person and his/her eligibility for a license
will consider the following criteria:

5 (1) Nature and severity of the act(s) or offense(s).

6 (2) Total criminal record.

7 (3) The time that has elapsed since commission of the act(s) or
8 offense(s).

9 (4) Whether the licensee has complied with any terms of parole,
10 probation, restitution or any other sanctions lawfully imposed against the licensee.

11 (5) If applicable, evidence of expungement proceedings pursuant
to Section 1203.4 of the Penal Code.

12 (6) Evidence, if any, of rehabilitation submitted by the licensee.

13 **COST RECOVERY**

14 13. Section 125.3 of the Code provides, in pertinent part, that the Board may
15 request the administrative law judge to direct a licensee found to have committed a violation or
16 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
17 and enforcement of the case.

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19 **FIRST CAUSE FOR DISCIPLINE**

20 **(August 28, 2003 Criminal Conviction for False Statements**

21 **Regarding Federal Health Care Programs)**

22 14. Respondent has subjected her license to disciplinary action under sections
23 490 and 2761, subdivision (f) of the Code in that Respondent was convicted of a crime that is
24 substantially related to the qualifications, functions, and duties of a registered nurse. The
25 circumstances are as follows:

26 a. On or about August 28, 2003, in a criminal proceeding entitled
27 *United States of America v. Nilda Abad, et al.*, in U.S. District Court, Northern District of
28 California, case number CR-02-0183, as a result of a negotiated plea, Respondent was convicted

1 of violating 42 U.S.C. section 1320a-7b, making false statements regarding federal health care
2 programs, a misdemeanor.

3 b. As a result of the conviction, on or about February 22, 2005,
4 Respondent was sentenced to one year probation and restitution in the amount of \$35,059, plus a
5 special assessment of \$25.

6 c. Respondent's conviction resulted from anonymous complaints
7 filed with Medicare and Blue Cross of California in 1997. The Department of Health and
8 Human Services conducted an investigation of Family Home Health Services (FHHS) for
9 allegations that between 1994 and 1998, FHHS admitted and treated patients who did not meet
10 Medicare's criteria for home health services, falsified medical information in patients charts,
11 inappropriately increased the frequency of services, and altered records in response to State
12 surveys. Respondent was the sister of FHHS's Chief Financial Officer and co-conspirator, and
13 was employed by FHHS as their Quality Assurance Manager.

14 15. Working with the Federal Bureau of Investigation, a warrant was executed
15 on FHHS in October 1998. Among items seized were altered and fabricated medical records.
16 Respondent admitted to writing nursing notes for other nurses' patients, falsifying records, and
17 fabricating records for home visits never made. Respondent further admitted that she was aware
18 her co-conspirators would submit her nursing notes to Blue Cross of California to support
19 FHHS's claim for payment. As a result of these false billings, Respondent conspired to defraud
20 Medicare of \$35,059.

21 **SECOND CAUSE FOR DISCIPLINE**

22 **(Incompetence)**

23 16. Respondent is subject to disciplinary action under section 2761,
24 subdivision (a)(1) of the Code in that on or between 1994 and 1998, Respondent's admissions
25 that she wrote nursing notes for other nurses' patients, falsified records, and fabricated records
26 for home visits never made demonstrated a failure to exercise the learning, skill, care and
27 experience ordinarily possessed and exercised by a competent registered nurse.

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1 PRAYER


2 WHEREFORE, Complainant requests that a hearing be held on the matters herein
3 alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

4 1. Revoking or suspending Registered Nurse License Number 230065,
5 issued to Nilda Javier Abad;

6 2. Ordering Nilda Javier Abad to pay the Board of Registered Nursing the
7 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
8 Professions Code section 125.3;

9 3. Taking such other and further action as deemed necessary and proper.

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11 DATED: 5/27/09

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13 
14 RUTH ANN TERRY, M.P.H., R.N.
15 Executive Officer
16 Board of Registered Nursing
17 Department of Consumer Affairs
18 State of California
19 Complainant

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